

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

GEORGE CARTER,

Petitioner,

v.

**CIVIL ACTION NO. 3:04CV66
(BROADWATER)**

EDWARD RUDLOFF,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge James E. Seibert, dated July 25, 2005. The petitioner did not file objections to the Report. After reviewing the above, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby ORDERED adopted.

The Court further ORDERS that the respondent's motion to dismiss be GRANTED and that the petitioner's §2254 petition be DENIED and DISMISSED WITHOUT PREJUDICE for failure to exhaust state judicial remedies based on the reasons set forth in the Magistrate Judge's Report and Recommendation. It is further ORDERED that this action be and is hereby STRICKEN from the active docket of this Court.

The Clerk is directed to transmit true copies of this Order to the petitioner and all counsel of record herein.

DATED this 21ST day of November, 2005.


W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE